

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 03 PRAGUE 001874

SIPDIS

STATE FOR INL, EZ; JUSTICE FOR OIA, AFMLS; TREASURY FOR
FINCEN

E.O. 12958: N/A

TAGS: [KTFN](#) [EZ](#)

SUBJECT: CZECH SUBMISSION FOR 2004-2005 INCSR, PART II
MONEY LAUNDERING AND FINANCIAL CRIMES

REF: 254401

1. Both geographic and economic factors render the Czech Republic vulnerable to money laundering. Tax fraud, narcotics trafficking, smuggling, auto theft, embezzlement, racketeering and trafficking in persons are the major sources of funds that are laundered in the Czech Republic. Domestic and foreign organized crime groups target Czech financial institutions for laundering activity; banks, currency exchanges, casinos and other gaming establishments, investment companies, and real estate agencies have all been used to launder criminal proceeds.

2. The Czech anti-money laundering legislation, Act No 61/1996, Measures against Legalization of Proceeds from Criminal Activity, went into effect in July 1996. An amendment in 2000 requires a wide range of financial institutions to report all suspicious transaction to the financial analytical unit (FAU) of the Ministry of Finance and to freeze assets that belong to people listed by the UN Sanction committee. They also have to freeze all assets of subjects that belong directly or indirectly to subjects named on the UN Security Council list. The latest amendment that came into force in September 2004 brought several major changes and harmonized Czech legislation with the Second EU directive. The amendment extends the list of entities which must report transactions to attorneys, casinos, realtors, notaries, accountants, tax auditors, and entrepreneurs with transactions exceeding the EU-standard 15,000 euros. All listed financial institutions also have a new obligation to report not only suspicious transactions possibly involving money laundering, but also those that might be connected to the financing of terrorism. In connection with that, the FAU is now authorized to share all information with the Czech Intelligence Service and the Czech National Security Bureau. It is hoped that this will improve the timeliness and nature of exchanges between the different agencies within the Czech government. However, the real effectiveness of communication from BIS and the National Security Bureau to the FAU remains to be tested. The FAU is newly authorized to cooperate and share information not only with other members of Egmont Group but also with other counterparts or international organizations under certain circumstances.

3. The Financial Analytical Unit, the Czech counterpart of Fincen, can only investigate accounts for which reports of suspicious transactions have been filled. FAU is an administrative unit without law enforcement authority. FAU can ask the banking sector to check for an account in the name of specific individual or organization. But FAU cannot order the check, or conduct the investigation itself. While post believes FAU conducts its investigations in an appropriate manner, those investigations only cover a tiny fraction of accounts in the country. Moreover, their primary purpose has been and remains identifying tax evaders.

4. The financial institution that reports the suspicious transaction can freeze the account of its client for 24 hours. This can be extended to 72 hours to give FAU time to find out whether there is any evidence of a crime. If there is, the case is forwarded to the financial police, who have another three days to gather necessary evidence. If enough evidence can be gathered to persuade a judge, the police and prosecutor continue their work and the account stays frozen throughout the investigation and prosecution, which could last months and years. If the judge isn't satisfied with the evidence gathered within the 72-hour period, the funds must be released. These limits do not apply to accounts owned by individuals or organizations on the UN's list of terrorists.

5. In July 2002, an amendment to the Criminal Code became effective. This amendment introduced a new, independent offense called 'Legalization of Proceeds from Crime.' It enables prosecution for legalization (laundering) of proceeds from all serious criminal activity punishable by up to five years of imprisonment if the person is as a member of an organized group or obtains considerable benefits from such offence. A sentence of eight years or forfeiture of property can be imposed for legalizing the proceeds from drug trafficking or other very serious crimes, or if the person commits the offence by abusing his official position. The latest amendment of the Criminal Code, that came into force in November 2004, adds new definitions for terrorist attacks and for financing of terrorism. A penalty of up to 15 years

of imprisonment can be imposed on those who support terrorists financially, materially or with other means.

¶6. An extensive revision of the Criminal Procedure Code, which facilitated the seizure and forfeiture of bank accounts, became effective January 1, 2002. It allows a judge, and in preliminary prosecution, a prosecutor or the police (with consent of a prosecutor) to freeze an account if the evidence shows that the financial means will be used to commit a crime, were used to commit a crime, or are proceeds from criminal activity. In urgent cases the police can also freeze the account without previous consent of the prosecutor, but to have to inform the prosecutor within 48 hours, who then confirms the freeze or releases the funds. The Law on the Administration of Asset Forfeiture in Criminal Procedure, passed in August 2003, implements provisions on the handling and care of seized property. That became effective on January 1, 2004.

¶7. For years, the Czech Republic had been criticized for allowing anonymous passbook accounts to exist within the banking system. Legislation adopted in 2000 prohibited new anonymous passbook accounts. In 2002, the Act on Banks was amended to abolish all existing bearer passbooks by December 31, 2002, and by June 2003, approximately 400 million euros had been converted. While account holders can still withdraw money from the accounts for the next decade, the accounts do not earn interest and cannot accept deposits.

¶8. The number of suspicious transaction reports transmitted to the FAU has increased significantly, while the number of reports evaluated and forwarded to law enforcement remains unchanged. This is interpreted as evidence of the active participation of mandated entities in the anti-money laundering regime. After clarifications to the reporting requirements in 1996, reporting rose from 95 unusual transactions per annum (1996) to 1,750 suspicious transactions in 2001, 1,260 in 2002, 1,970 in 2003 and 3,018 from January through November 2004. The number of reports forwarded to the police increased from none the first year to 115 in 2002 and 114 in 2003. From January through November 2004 there were 90 reports forwarded to police; every case that was passed to law enforcement was investigated.

¶9. In July 2004, a new specialized police unit called the Financial Police (known also as Illegal Proceeds and Tax Crime Unit) was established. The Department of Criminal Proceeds and Money Laundering, which used to be part of the unit fighting organized crime, became a part of the newly established Financial Police. It is still the main law enforcement counterpart to FAU, a partnership which has led to the first formal charges on money laundering.

¶10. In 2004, the Department of Criminal Proceeds and Money Laundering investigated 139 cases and secured assets valued at roughly US\$90,000. This compares to 2003 when police secure approximately US\$29,000 113 cases. In 2004 the department participated in 25 cases investigated by the Czech National Drug Headquarters and secured assets valued at US\$700,000. In 2003, 23 cases related to drug crimes were investigated and the department succeeded in securing assets valued at US\$7,250,000.

¶11. The Ministry of Justice statistics for the first half of 2004 show the first two convictions for attempting to legalize the proceeds of crime. The only penalties imposed were a suspended sentence and a fine. 4 people were prosecuted and 3 were accused, one case was suspended. In 2003 there were 36 cases, five cases were suspended, 7 people were prosecuted and 7 were accused. There were no convictions in 2003. One ongoing issue is that in the Czech Republic, law enforcement must prove that the assets in question were derived from criminal activity. The accused is not obligated to prove that the property or assets were acquired legitimately.

¶12. The Czech Government has approved the 2004 National Action Plan for the Fight against Terrorism. This document covers themes ranging from police work and cooperation to protection of security interests, enhancement of security standards, and customs issues. The FAU currently is distributing &terrorist lists8 to relevant financial and governmental bodies. Czechs now do have specific laws criminalizing terrorist financing and have legislation permitting rapid implementation of UN and EU financial sanctions, including action against accounts held by suspected terrorist entities or individuals. A new government body called the Clearinghouse was instituted in October 2002, under the FAU; its function is to streamline input from institutions in order to enhance cooperation and response to a terrorist threat.

¶13. Czech authorities have been cooperative in the global effort to identify suspect terrorist accounts (FAU has checked the accounts of about a thousand people since the September 11, 2001) but no accounts have been identified, and no terrorist assets have been confiscated.

¶14. The Czech Republic became a signatory to the UN International Convention for the Suppression of the Financing of Terrorism in September 2000, but has not yet ratified it. The main obstacle to ratification is the absence of legislation on criminal liability of legal persons (companies). This legislation has been proposed and will become a part of the whole recodification of the Criminal

Code that authorities hope will take effect in 2006. In the meantime, the government is trying to identify a different way through administrative or civil procedure to satisfy Convention requirements.

¶15. The Czech Republic is a party to the 1988 UN Drug Convention and the World Customs Organization's Convention on Mutual Administrative Assistance for the Prevention Investigation and Repression of Customs Offenses. An extradition treaty and an MLAT are in force between the U.S. and the Czech Republic, though the extradition treaty is 80 years old, based on outdated mutual lists, and does not allow the extradition of Czech nationals to the US. The Czech Republic has taken the necessary legislative measures to join the European Arrest Warrant. However, the EAW has not been used and there is sharp debate about whether the Czech constitution even allows the extradition of nationals. It is hoped that a test case will resolve the issue in 2005. Formalization of an agreement between the Czech Republic and Europol took place in 2002. The agreement allows an exchange of information about specific crimes and investigating methods, the prevention of crime, and the training of police. Among the most important crimes cited in the cooperation agreement are terrorism, drug trafficking, and money laundering.

¶16. The FAU is a member of the Egmont Group, and is authorized to cooperate with its foreign counterparts, including those not part of the Egmont Group. The Czech Republic is a party to the Strasbourg Convention and actively participates in the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) as both evaluator and evaluatee,⁸ and in 2001 underwent a mutual evaluation by the Committee. The Czech Republic continues to implement changes to its anti-money laundering regime based on the results of the mutual evaluation. In May 2003, the Czech Republic also underwent a financial sector assessment by the World Bank/IMF. The Czech Republic is a party to the 1988 UN Drug Convention and in December 2000 signed, but has not yet ratified, the UN Convention against Transnational Organized Crime. Czechs wants to ratify the Convention together with its three supplemental Protocols which cause the delay in ratification. The Czech Republic also is a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

¶17. The Czech Republic should continue to enhance its anti-money laundering regime and should become a party to the UN International Convention for the Suppression of the Financing of Terrorism. In addition, the Czech Republic should continue to work toward supporting and streamlining its prosecution regime, including shifting the burden of proof from the prosecutor to the defendant. The question of compensation of damages in cases of acquittal also needs to be solved. The Czech Republic should also take steps to facilitate the forfeiture of assets jointly owned, for example by husband and wife. This is very complicated at the moment. The possible confiscation of property as substitution for illicit proceeds, would also be helpful.

CABANISS